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Keeping First Nations Informed

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Message from the Director

As I travel throughout Indian Country and meet with many tribal representatives, I am asked about the current focus on Bank Secrecy Act (BSA) compliance. Many of these concerns are arising from the recent significant fine assessed by the Financial Crimes Enforcement Network (FinCEN) against a tribal casino in Oklahoma along with publicity that was generated by several FBI cases that were connected to that action. In addition, the number of BSA civil examinations has increased as the federal government directs more resources to this area.

While much of the impetus behind the creation of the Bank Secrecy Act was initially focused on combating the ability of organized crime to launder proceeds of illegal activities, the events of September 11, 2001 brought a renewed emphasis on this area by highlighting the need to track the movement of money that might be used to finance terrorism. The post 9/11 world brought an entire series of new laws and regulations designed to tighten the reporting requirements and ensure that all levels of government have access to vital information to combat crime and terrorism. The Patriot Act is the best example of these changes, but the extension of Suspicious Activity Reporting to tribal casinos in March 2003 is another example.

Hopefully, all governments share a common objective of minimizing the opportunity for individuals to launder funds and/or move money that might be used to harm ourselves, our children, and our neighbors. The recent tribal money laundering case in Oklahoma, as well as other reports filed by tribal entities, has shown that organized crime and terrorists have discovered tribal

entities and are making attempts to use them for money laundering.

We are grateful that many tribes have instituted strong Bank Secrecy Act Compliance Programs and are using various tools to alert law enforcement to suspected or potential illegal activities. The filing of FinCEN Forms 102 and 103 by tribal casinos are one example, but we have also had numerous telephone calls from tribal officials to the Money Laundering Hotline. Many Tribes have shown that they want to be full partners in this area. Despite the burden and cost associated with the BSA Compliance Program, there is a keen recognition that we all need to work together to minimize the possibility of money laundering.

However, we are also aware that there are Tribes that lack fully effective BSA programs; ITG stands ready to assist them in making enhancements. ITG Specialists are available to provide training for your staff, copies of pertinent federal regulations, or to assist in reviewing your BSA Compliance Program for your entity. I encourage you to take advantage of our resources and partner with ITG to ensure that Indian Country is a leader in Bank Secrecy Act compliance.

Christie Jacobs

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#### Helpful Hints to Avoid Penalties

One of the areas that surfaced as a concern in Tribal responses to the 2005 Customer Satisfaction Survey is the need for additional assistance in mitigating penalties. While your assigned ITG Specialist is always available to assist you, the best way to avoid penalties is to have an in-depth understanding of what can be done to reduce or eliminate them before they are ever assessed.

In an effort to assist, ITG has created a "Helpful Hints to Avoid Penalties" guide, which is now available on the ITG web site under the Employment Tax page. Hopefully, the suggestions outlined in that guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps required to address it.

Penalty notices arise from various situations such as failure to deposit payroll taxes timely and late filing or non-filing of various returns. The two most important things to do are:

Determine, through a review of your records, if the notice is correct, AND  
Respond to the notice on or before the date required.

Failure to respond timely can lead to the assessment of further penalties and

interest. Failure to review records to ensure the correctness of the notice can lead to payment of unnecessary penalties. If the notice is determined to be correct and additional tax, penalties, and interest are due; payment should be made within the time frame shown in the notice.

Your Indian Tribal Government Specialist and other IRS personnel are ready to assist you in understanding the notices and determining their accuracy. Our Customer Account Services staff can be contacted toll-free at 1-877-829-5500. This call center is open from 8:00 am to 4:30 pm eastern time.

Your ITG Specialist is also available to assist when a timely response to an incorrect notice does not achieve a satisfactory resolution to the situation. The ITG Specialist can review your response and help you file the proper forms to resolve the issue or ensure the case is routed to the proper office for resolution.

We hope that the guide, coupled with Publication 4268, our on-line Employment Tax Guide for Indian Tribal Governments, will help Tribes to meet federal tax administration requirements with a minimum risk of penalties.

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To add your name or e-mail address to our mailing list, please contact us via e-mail at [Carole.M.Oller@irs.gov](mailto:Carole.M.Oller@irs.gov) or call Carole Oller at (605) 787-5650.

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#### Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

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#### Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes).

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#### A Primer on Published Guidance

For anyone not familiar with the inner workings of tax administration, the array of IRS guidance may seem, well, a little puzzling at first glance. To take a little of

the mystery away, here's a brief look at seven of the most common forms of guidance. In its role in administering the tax laws enacted by the Congress, the IRS must take the specifics of these laws and translate them into detailed regulations, rules and procedures. The Office of Chief Counsel fills this crucial role by producing several different kinds of documents and publications that provide guidance to taxpayers, firms and charitable groups. As we begin to upload substantial content to the "Published Guidance" section of the ITG web site, we thought it might be useful to explain the various types of issuances that can be located there.

**Regulation.** A regulation is issued by the Internal Revenue Service and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register.

**Revenue Ruling.** A revenue ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to taxpayers, IRS personnel and tax professionals. For example, a revenue ruling may hold that taxpayers can deduct certain automobile expenses.

**Revenue Procedure.** A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is also published in the Internal Revenue Bulletin. While a revenue ruling generally states an IRS position, a revenue procedure provides return filing or other instructions concerning an IRS position. For example, a revenue procedure might specify how those entitled to deduct certain automobile expenses should compute them by applying a certain mileage rate in lieu of calculating actual operating expenses.

**Private Letter Ruling.** A private letter ruling, or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. A PLR may not be

relied on as precedent by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the taxpayer to whom it was issued.

**Technical Advice Memorandum.** A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural questions that develop during a proceeding. A request for a TAM generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the taxpayer whose circumstances triggered a specific memorandum.

**Notice.** A notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

**Announcement.** An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when they are certain to be published in the immediate future; or to notify taxpayers of the existence of an approaching deadline.

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IRS and SSA Announce Changes to Electronic Filing  
from SSA/IRS Reporter, Summer 2006

Social Security Requires Electronic Filing Beginning with Tax Year 2006 W-2s

If your company now files W-2s with Social Security on diskette, you will be required to file electronically starting in tax year 2006 (W-2s due in calendar year 2007), as Social Security will no longer accept diskettes. Similarly, as of tax year 2005, Social Security no longer accepts W-2s filed on magnetic tape and cartridge.

Companies that file on magnetic tape, cartridge or diskette format their reports according to Social Security's Magnetic Media Reporting and Electronic Filing format (MMREF). Filing electronically uses the same MMREF format, so re-programming is not necessary. All you need to do is follow your same year-end process, up to the point where you would copy the W-2 report onto a tape, cartridge or diskette and mail it to Social Security.

Instead, you will log onto our Web site and upload the file. It's that simple. For security purposes, you will need to register first for a PIN and password, which you may already have since the PIN is required in the RA—Submitter Record in your wage report.

Each year Social Security receives more than 235 million W-2s. Sixty-seven percent of them are now transmitted electronically. Find out why so many businesses choose e-filing. Visit <http://socialsecurity.gov/bsowelcome.htm> and register today.

#### Electronic Data Exchange (EDI) and Proprietary Formats for Electronically Filed Forms 940 and 941 to be Discontinued

The Internal Revenue Service (IRS) recently announced plans to discontinue the acceptance of electronically filed Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 941, Employer's Quarterly Federal Tax Return, that are transmitted in the EDI and Proprietary formats. Participants currently using the EDI and Proprietary formats can transmit Form 941 for the 3rd Quarter until November 13, 2006. After that time, the IRS will no longer accept e-file transmissions in these formats.

Decline in the use of these formats, combined with increasing costs to maintain these formats, prompted this decision. This decision is also necessary as part of the IRS' efforts to provide a more modernized and efficient method of receiving Form 940/941 returns.

IRS will continue to support the Employment Tax e-file System which utilizes the Extensible Markup Language (XML) standard for the transmission of Forms 940/941. The Employment Tax e-file System provides greater flexibility for filing Forms 940/941 electronically. See <http://www.irs.gov/efile/article/0,,id=118519,00.html> for more information on the Employment Tax e-file System (XML) and how it can improve your filing process.

#### IRS to Eliminate 3 1/2-inch Diskettes

Effective January 1, 2007, the Internal Revenue Service (IRS) Enterprise Computing Center in Martinsburg, WVA (IRS/ECC-MTB) will no longer accept information returns filed on 3 1/2-inch diskettes.

IRS/ECC-MTB encourages filers to file electronically on the Internet using the FIRE (Filing Information Returns Electronically) system at <http://fire.irs.gov>.

Note: If you already have a Transmitter Control Code (TCC) for diskette filing, you do not need to reapply.

Some advantages of filing electronically are:

Paperless Form 4804 not required;

Secure Socket Layer (SSL) 128-bit encryption;

More attempts than magnetic media filing to replace bad files within a specific time frame before imposing penalties;

Better customer service due to on-line availability of transmitter's files for research purposes;

Extendable due dates for electronically filed Forms 1098, 1099, and W-2G;

Longer period to test electronic files: November 1st through February 15th; and

Available results available within 1-2 workdays regarding the acceptability of the data transmitted.

Additional information on the electronic filing of information returns can be found in Publication 1220, Specifications for Filing Forms 1098, 1099, 5498 and W-2G Electronically or Magnetically; Rev. Proc. 2005-49

(<http://www.irs.gov/app/scripts/retriever.jsp>) reprinted from IR Bulletin-dated August 1, 2005, or Publication 3609, Filing Information Returns Electronically (<http://www.irs.gov/app/scripts/retriever.jsp>). Please call toll free at 866-455-7438 between 8:30 a.m.-4:30 p.m. EST if you have any questions.

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## Treatment of Payments to Officials and Certain Workers

There appears to be some confusion out there regarding elected, appointed and public officials, as well as tribal council members and election workers. The Indian Tribal Governments division of the Internal Revenue Service has revised and updated the Employment Tax Desk Guide for tribal employee's. All of these types of employees are discussed in this guide, if you have a question, please refer to this guide or contact your local ITG Specialist. You can download a copy of the desk guide from the IRS Web Site from <http://www.irs.gov/pub/irs-pdf/p4268.pdf>.

Whether elected or appointed, all officials are public officials. Generally, public officials are employees for Federal Insurance Contributions Act (FICA) and federal withholding tax purposes. Treasury Regulation Section 31.3401(c)-1(a) provides the definition of an employee to include any public official whether elected or appointed. Examples of public officials include but are not limited to members of the tribal council, school board, housing authority, and tribal judges. Although all these workers are public officials, they are not all subject to Revenue

Ruling 59-354. This revenue ruling applies only to members of the Tribal Council in their capacity as a council member. Since Rev. Rul. 59-354 does not apply to most public officials, payments to public officials, both elected and appointed, constitute wages and are subject to FICA and federal withholding taxes.

Since Revenue Ruling 59-354 applies only to members of the Tribal Council in their capacity as a council member, their earnings are includible in the council member's gross income, however the earnings do not constitute wages for purposes of FICA, Federal Unemployment Taxes (FUTA), and Federal income tax withholding. Tribal officials are liable for federal income tax on these wages, and some may voluntarily have these taxes withheld to avoid personal year end deficiencies.

Tribal Council members' salaries will be shown in box 1; Wages, Tips, Other Compensation of Form W-2. Additionally, in box 14; Other, you should indicate Revenue Ruling 59-354. This will show why there are no amounts listed in the boxes for federal income tax withheld (box 2) or FICA (boxes 3, 4, and 7). *Note:* If the tribal council member requests to have federal taxes withheld, box 2 will reflect these voluntarily withheld amounts. See Exhibit 3-1 in the Employment Tax Desk Guide for an example of a Tribal Council members' W-2.

Election workers are employees and must be issued a Form W-2. Unlike an employee, there are separate rules for the reporting of income for election workers, which are found in Revenue Ruling 2000-6.

If an election worker earning income from working election booths earn less than \$600 in one year, there is no requirement to file Form W-2. The election worker must report the income as wages on their individual income tax return.

If an election worker earns between \$600 and \$1,199, a Form W-2 is required, however FICA and federal income tax withholding are NOT required to be withheld. The election worker must report the income as wages on their individual income tax return.

If an election worker earns \$1,200 or more, a Form W-2 is required. The wages ARE subject to FICA, but not federal income tax withholding. The election worker must report the income as wages on their individual income tax return.

If an election worker is also employed by the tribal government in another capacity, the FICA and federal income tax withholding rules apply as stated above, however all income will be added to their other wages and will be reported on Form W-2.

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## Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear “too good to be true” and often are.

If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at [tege.itg.schemes@irs.gov](mailto:tege.itg.schemes@irs.gov).

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## The Trust Fund Recovery Penalty

Tribes who employ individuals must withhold federal income, social security, and Medicare taxes from employee's wages or salaries. These taxes are called trust fund taxes and must be paid to the Internal Revenue Service through tax deposits or as payments made with the applicable returns.

If the trust fund taxes are willfully not collected, are not truthfully accounted for and paid, or are evaded or defeated in any way, we may charge a trust fund recovery penalty. This penalty is equal to the amount of the trust fund taxes evaded, not collected, not accounted for, or not paid to the IRS. We also charge interest on the penalty. (This is also referred to as the 100% Penalty—Section 6672 of the Internal Revenue Code.)

The trust fund recovery penalty may apply to a person or persons the IRS decides is responsible for collecting, accounting for and paying the trust fund taxes and who acted willfully in not doing so. If the IRS can't immediately collect the taxes from the employer or business, we will decide who the responsible person or persons are and who acted willfully.

A responsible person acts “willfully” if this person knows that the required actions are not taking place for any reason. “Willfully” means voluntarily, consciously, and intentionally. Paying other business expenses instead of trust fund taxes is considered willful behavior, and would subject tribal officials to be personally liable for the penalty.

Any person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may be a responsible person. A responsible person may be an officer or employee of a corporation, or a partner or employee of a partnership. This may include accountants, trustees in bankruptcy, members of a board, banks, insurance companies, or sureties. The

responsible person can even be another corporation, a volunteer director/trustee, tribal chairman or tribal council members. Responsible persons may include those who direct or have authority to direct the spending of business funds. The obvious Tribal scenario would be if the Tribal Chairman, Comptroller, Treasurer, or Tribal Council were to direct the Payroll Clerk not to file or pay Federal Tax Deposits when due.

You can avoid the trust fund recovery penalty by making sure that all taxes are collected, accounted for, and paid to the IRS when required. Make your tax deposits and payments on time.

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#### W-2 News—Subscribe Today!

Do you submit Form W-2, Wage and Tax Statement, to Social Security for your business? If you do, you will want to sign up for W-2 News—a free electronic newsletter.

Because your time is valuable, we will issue this newsletter only when important wage reporting information becomes available, such as when:

Changes occur in W-2 reporting requirements;  
Changes occur in Paper and Electronic Filing Instructions;  
The new MMREF and AccuWage become available; or  
The Business Services Online Web site opens for business.

To sign up, just go to: <http://www.socialsecurity.gov/employer/w2news>, provide your email address and select Submit.

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#### Self-Assess Your Federal Tax Compliance Risks

Tribal entities can now self-assess their federal tax compliance and work with ITG to address any problems they uncover. Entities electing to participate receive a fillable template from ITG and are provided with the name of a local ITG Specialist who will serve as their resource during the process.

Information on the program, as well as an on-line request form, is available through the “Enhancing Federal Tax Compliance” link on the right-hand of the ITG web site landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes). You can also make an inquiry about the program via e-mail to [tege.itg.tefac@irs.gov](mailto:tege.itg.tefac@irs.gov).

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## Federal Tax Calendar for Third Quarter 2006

### July 2006

Monday, July 3<sup>rd</sup> - Pull Tabs Annual Form 11-C due for tribe and all agents  
Thursday, July 6<sup>th</sup> - Make a deposit for 6/28-6/30\*  
Friday, July 7<sup>th</sup> - Make a deposit for 7/1-7/4\*  
Monday, July 10<sup>th</sup> - Employees report June tip income to employers if \$20 or more  
Wednesday, July 12<sup>th</sup> - Make a deposit for 7/5-7/7\*  
Friday, July 14<sup>th</sup> - Make a deposit for 7/8-7/11\*  
Monday, July 17<sup>th</sup> - Make a deposit for June if under the monthly deposit rule\*\*  
Wednesday, July 19<sup>th</sup> - Make a deposit for 7/12-7/14\*  
Friday, July 21<sup>st</sup> - Make a deposit for 7/15-7/18\*  
Wednesday, July 26<sup>th</sup> - Make a deposit for 7/19-7/21\*  
Friday, July 28<sup>th</sup> - Make a deposit for 7/22-7/25\*

### August 2006

Wednesday, August 2<sup>nd</sup> - Make a deposit for 7/26-7/28\*  
Friday, August 4<sup>th</sup> - Make a deposit for 7/29-8/1\*  
Wednesday, August 9<sup>th</sup> - Make a deposit for 8/2-8/4\*  
Thursday, August 10<sup>th</sup> - Employees report July tip income to employers if \$20 or more  
Friday, August 11<sup>th</sup> - Make a deposit for 8/5-8/8\*  
Tuesday, August 15<sup>th</sup> - Make a deposit for July if under the monthly deposit rule\*\*  
Wednesday, August 16<sup>th</sup> - Make a deposit for 8/9-8/11\*  
Friday, August 18<sup>th</sup> - Make a deposit for 8/12-8/15\*  
Wednesday, August 23<sup>rd</sup> - Make a deposit for 8/16-8/18\*  
Friday, August 25<sup>th</sup> - Make a deposit for 8/19-8/22\*  
Wednesday, August 30<sup>th</sup> - Make a deposit for 8/23-8/25\*

### September 2006

Friday, September 1<sup>st</sup> - Make a deposit for 8/26-8/29\*  
Thursday, September 7<sup>th</sup> - Make a deposit for 8/30-9/1\*  
Friday, September 8<sup>th</sup> - Make a deposit for 9/2-9/5\*  
Monday, September 11<sup>th</sup> - Employees report August tip income to employers if \$20 or more  
Wednesday, September 13<sup>th</sup> - Make a deposit for 9/6-9/8\*  
Friday, September 15<sup>th</sup> - Make a deposit for 9/9-9/12\*  
Make a deposit for August if under the monthly deposit rule\*\*  
Wednesday, September 20<sup>th</sup> - Make a deposit for 9/13-9/15\*  
Friday, September 22<sup>nd</sup> - Make a deposit for 9/16-9/19\*  
Wednesday, September 27<sup>th</sup> - Make a deposit for 9/20-9/22\*

Friday, September 29<sup>th</sup> – Make a deposit for 9/23-9/26\*

\*= Make a Payroll Deposit if you are under the semiweekly deposit rule.

\*\*= Make a Payroll Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS must be initiated at least one day prior to the due dates listed above in order to be timely.

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## Return Filing Dates

### July 3rd

File Form 11-C (Occupational Tax) to register and pay the annual tax if you are in the business of taking wagers.

### July 31st

File Form 941 for the 2nd quarter of 2006. If all deposits paid on time and in full, file by August 10th.

File Form 730 (Monthly Tax Return for Wagers) and pay the tax on applicable wagers accepted during June.

### August 31st

File Form 730 and pay the tax on applicable wagers accepted during July.

### October 2nd

File Form 730 and pay the tax on applicable wagers accepted during August.

Remember, if your tribe sells pull tabs, you must file Forms 11-C for the tribe and any agent(s) who sells pull tabs for the tribe by July 3rd.

Form 730 must also be filed each month.

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